***THE HON'BLE MR. JUSTICE V. ESWARAIAH**

+WRIT PETITION NO.17720 OF 2003

%19-07-2004

N. Nancharaiah, S/o Munnaiah, R/o.H.No.24-123/1,

College Road, Ibrahimpatnam, Krishna District.

…PETITIONER

Vs.

1. Girijan Cooperative Corporation Limited, through its Vice Chairman &

Managing Director, Visakhapatnam.

2. Girijan Cooperative Corporatino Limited, Through its Divisional

Manager, Utnoor, Adilabad District.

3. General Manager(Finance), Girijan Cooperative Corporation Limited,

Corporate Head Office, Visakhapatnam.

… RESPONDENTS

! COUNSEL FOR PETITIONER: MR. K. RAGHUVEER REDDY

^COUNSEL FOR RESPONDENTS: MR. N. SRIDHAR REDDY (SC)

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>HEAD NOTE:

? CASES REFERRED:

NIL

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 17720 of 2003

Between:

N. Nancharaiah, S/o. Munnaiah,
R/o. H.No. 24-123/1, College Road, Ibrahimpatnam, Krishna District.

..... PETITIONER

AND

1 Girijan Cooperative Corporation Limited, throurgh its Vice Chairman & Managing Director, Visakhapatnam.
2 Girijan Cooperative Corporation Limited, Through its Divisional Manager, Utnoor, Adilabad District.
3 General Manager (Finance), Girijan Cooperative Corporation Limited, Corporate Head Office, Visakhapatnam.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ or writs, order or direction, declaring the proceedings dt 1.8.2003 in Rc no. 1332/2003/Admn.9 on the file of the first respondent, and the proceedings dt. 24.6.2003 in Proc. 957/02 IA-2, dt. 21.7.2003 in no. 958/02/IA-2, dt 28.3.2003 in No. 959/02/IA-2, dt 21.7.2003 in No. 960/02-IA-2, and dt 28.3.2003 in No. 962/02/IA-2 on the file of the third respondent, as illegal, arbitrary and without jurisdiction and consequently direct the first respondent to forthwith pay the amount of Rs. 3,42,072/- to the petitioner : Award costs

Counsel for the Petitioner:MR.K.RAGHUVEER REDDY

Counsel for the Respondents : MR.N.SRIDHAR REDDY

(Standing counsel)

The Court made the following :

ORDER:

Heard the learned counsel appearing for the petitioner as well as the respondents.

The petitioner was appointed as salesman in the Girijan Cooperative Corporation Limited-1st respondent, in the year 1972; thereafter he was promoted as L.D.C. in the Girijan Primary Cooperative Marketing Society Limited, Adilabad, and had been continued as such till he has opted for voluntary retirement. It is submitted that he

has served the 1st respondent Corporation for 29 years without any stigma on his part and to the satisfaction of higher authorities. The 1st respondent Corporation is wholly owned by the State of A.P. and that it had taken a decision to extend the voluntary retirement scheme (herein after referred to as 'VRS') to its employees. Pursuant to that, the petitioner was asked along with the other employees to submit their willingness for obtaining retirement under VRS. Accordingly, the petitioner opted to retire under that scheme and the said willingness of the petitioner was accepted and the Divisional Manager, Girijan Cooperative Corporation Limited, Adilabad, through Proc.Rc.No.B/60/2000 dated 28-06-2001 informed the petitioner that pursuant to the order of the Government issued in G.O.Ms.No.62 SW (GCC-2) Department, dated 20-06-2001 and as per the instructions issued by Corporation Head Office vide circular in Rc.No.1776/2000 A5, that he will be retired under VRS from the afternoon of 30-06-2001. The petitioner was relieved from the service of the 1st respondent Corporation on 30-06-2001. However, the terminal benefits were not paid to him though he retired under the VRS. As such, the petitioner filed W.P.No.7794 of 2003 before this Court for the payment of retirement benefits pursuant to his retirement on 30-06-2001 under VRS as LDC in Girijan Cooperative Marketing Society Limited, Adilabad. This Court, by order, dated 30-04-2003, in W.P.M.P.No.10156 of 2003, issued directions to the effect that the petitioner shall be paid terminal benefits payable to him pursuant to his voluntary retirement, unless any disciplinary proceedings on the basis of any charge sheet issued prior to the retirement are pending.

The case of the petitioner is that admittedly, no cases are pending against him either prior to his retirement or upto the date of passing of the order by this Court in the said writ petition. As the respondents have not taken any action for payment of the retirement benefits, the petitioner got issued a legal notice asking the respondents to comply with the order of this Court. Thereafter, the 1st respondent by impugned proceedings dated 01-08-2003 in RC.No.1332 of 2003 Admn.9 worked out the terminal benefits of the petitioner totalling to Rs.3,42,072/-, however, directed to pay the balance of retirement benefits after deducting a sum of Rs.2,55,917.79 towards the inadmissible deficits ordered to be recovered for the years 1979 to 1984 through proceedings dated 24-06-2003, 21-07-2003, 23-03-2003, and 28-03-2003, respectively, and also other dues/advances amounting to Rs.24,562/- towards I.R. Advance, adhoc payment, D.R. deficits. Questioning the said proceedings of the 1st

respondent, the present writ petition has been filed.

It is contended by the learned counsel for the petitioner that insofar as the sum amounting to Rs.24,562/-, there was no dispute and that the petitioner has no objection for deduction of the said amount from out of the terminal benefits. But it is contended that in so far as the recovery of inadmissible deficits amounting to Rs.2,31,355.79 from the years 1979 to 1984 is concerned, there is no basis to order such recoveries. The petitioner has worked in the office of the 2nd respondent from 1979 to 1984 and during that period there was absolutely no complaint whatsoever against him with regard to deficits. No proceedings were initiated, at any point of time, stating that there are inadmissible deficits, which have to be recovered from him. Even after retirement, no action has been taken for a period of two years. It is only after passing of interim direction by this Court and pursuant to the contempt notice issued for violation of the interim orders of this Court, the said impugned order has been passed basing on certain proceedings communicated by the 3rd respondent in the year 2003. More so, the proceedings referred in the impugned order were passed unilaterally and after his retirement. It is also contended that the petitioner has submitted the accounts regularly and there was no complaint whatsoever against him at any point of time and that the accounts submitted by the petitioner were audited, therefore, there is no basis for the aforesaid proceedings stated above for recovery of the inadmissible deficits for the year 1979 to 1984. It is also stated that recovery of such huge amounts after a period of 17 years from 1984, without taking any action all these years, is illegal and arbitrary.

On the other hand, learned Standing counsel for respondents submits that the petitioner has opted for voluntary retirement pursuant to the scheme extended by Girijan Cooperative Corporation Limited to its employees with the permission of Government of Andhra Pradesh, and that the Government has accorded sanction to retire 265 employees under the scheme with effect from 30-06-2001 and the terminal benefits of such employees were sent to the Pension Payment Officer, Hyderabad for pre-audit. After the pre-audit, the claims were sent to the Government for release of funds. Basing on the proposals of pre-audit, the Government has released the funds for settlement of terminal benefits to all its employees who retired under VRS. The claims were settled by duly recovering the recoverable amount, if any, from the said employees who are sought to be retired under VRS as per the provisions laid down in G.O.Ms.No.16, dated 22-03-2001. It is further submitted that the petitioner is

one among such employees. His terminal benefits were also settled along with other employees by the respondent Corporation pursuant to the said G.O. and that the inadmissible deficits amounting to Rs.2,31,355/- for the years 1979 to 1984 along with other statutory advances that were pending against the petitioner were withheld and the remaining amount payable was also paid on 11-08-2003. It is stated that the Corporation has recovered the amounts due under inadmissible deficits duly following the established procedure. No established procedure has been narrated either in the counter or explained across the bar. It is stated that the petitioner is supposed to send the deficits for regularization to the office for the purpose of audit, but he has withheld the same till the time of retirement and hence, the delay has occurred. Therefore, the action of the respondents for the recovery after a lapse of 17 years, cannot be accepted and is untenable. It is further stated that the terminal benefits of the petitioner were settled duly following the established procedure and the provisions laid down by the Government. However, it is admitted that there is no procedure envisaged for initiating the disciplinary proceedings for recovery of such amounts.

Admittedly, the so-called inadmissible deficits were relating to the years 1979 to 1984. The application of the petitioner opting to retire under VRS was accepted on 04-06-2001. There is no indication in the letter of acceptance about the so-called inadmissible deficits to be recovered from the petitioner. It is also not in dispute that no action has been taken against the petitioner for the recovery of the inadmissible deficits while the petitioner was in service. It is only after the petitioner was retired from service on 30-06-2001, the proceedings said to have been passed unilaterally in the year 2003, and basing on the same, the 1st respondent issued the impugned proceedings dated 01-08-2003. The proceedings of the 3rd respondent issued in the year 2003, which is the basis to pass the impugned order discloses that certain value of inadmissible deficits were noticed. Any disputed amount of recovery sought to be made from the employee, cannot be made without following the principles of natural justice. The employee shall be put on notice as to why the said deficit amount shall not be recovered. Absolutely, no notice was issued to the petitioner from the year 1979 onwards till the date of his retirement and the so-called proceedings dated 01-08-2003 was passed unilaterally behind the back of the petitioner. If there is any lapse on the part of the officers of the respondent, it is not known why no action has been initiated against the concerned for not submitting the

accounts to the audit. It is also not known whether the auditor has taken any objection with regard to the inadmissible deficits sought to be recovered from the petitioner. Therefore, the learned counsel for the petitioner assails the aforesaid conduct of the respondents *inter alia* on the ground that having accepted the voluntary retirement and having relieved the petitioner from service in the year 2001, the respondents have no manner of power, authority or jurisdiction to initiate departmental enquiry against the petitioner, and when no departmental enquiry is initiated, the question of recovery of the so-called deficit amounts cannot be made after a lapse of 17 years, that too after two years of his retirement. It is also contended that with effect from 30-06-2001 there is severance of master and servant relationship between the petitioner and the respondent, and, in the absence of any statutory rule enabling the respondents either to initiate the disciplinary proceedings or to recover the so-called deficit amounts, no such recoveries can be made without following the due procedure. No statutory rule enables the respondents to pass such an order after accepting the voluntary retirement of the petitioner and after relieving him with effect from 30-06-2001.

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Learned Standing counsel appearing for respondents is unable to point out any statutory provision for the exercise of such a power to initiate recovery of the deficit amounts after a lapse of 17 years, and that too after two years of retirement of the petitioner. If there is any gross mis-conduct on the part of the petitioner causing substantial loss to the Corporation, it is not known why the Corporation has slept over the matter for a period of 17 years and the so-called recovery of the deficit at this point of time is irrational. When the respondents cannot take any action either to initiate disciplinary proceedings or for recovery of the so-called deficit amounts after his retirement, it is not open to the respondents to pass such an order depriving the petitioner from payment of his retirement benefits.

In support of his contentions the learned counsel for the petitioner relied on a Judgment of this Court in W.P.No.5292 of 2002 dated 20-08-2002, wherein my learned brother Justice Goda Raghuram allowed the said Writ Petition relating to the same Corporation accepting the retirement of an employee with effect from 30-06-2001. It is held that the respondents have irrationally denied the similarly situated petitioner for the grant of his retirement benefits consequent to his retirement. While allowing the said writ petition the respondents were directed to calculate and pay the

retirement benefits due to the petitioner therein. The reasons arrived at in the said writ petition equally applies to the instant case.

For the aforesaid reasons, I am of the opinion that the order of the 1st respondent, dated 01-08-2003, directing recovery of inadmissible deficits amounting to Rs.2,31,355/- relating to minor forest produce and agriculture produce is illegal, unsustainable and against the principles of natural justice. The respondent is not empowered to initiate action for the recovery of the so-called deficits having accepted the voluntary retirement of the petitioner and having relieved him with effect from 30-06-2001. Therefore, the impugned order as to the recovery of the inadmissible deficits amounting to Rs.2,31,355/- is set aside, and the respondents are directed to pay the withheld amount of Rs.2,31,355/- to the petitioner towards his retirement benefits, within four weeks, from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed. No order as to costs.

19-07-2004

ts/mrr

Note:L.R. copy to be marked.

1. Vice Chairman & Managing Director, Girijan Cooperative Corporation Limited, Visakhapatnam.
2. Divisional Manager, Girijan Cooperative Corporation Limited, Utnoor, Adilabad District.
3 General Manager (Finance), Girijan Cooperative Corporation Limited, Corporate Head Office, Visakhapatnam.

4. 2CD copies

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the ninteenth day of July two thousand and four.

ASST.REGISTRAR

TO

One fair copy to the Honourable Mr.Justice

(for his Lordships kind perusal).

1. Vice Chairman & Managing Director, Girijan Cooperative Corporation Limited, Visakhapatnam.
2. Divisional Manager, Girijan Cooperative Corporation Limited, Utnoor, Adilabad District.

3 General Manager (Finance), Girijan Cooperative Corporation Limited, Corporate Head Office, Visakhapatnam.

4 8 L.R. Copies.

5. The Under Secretary, Union of India, Ministry of Law,

Justice and Company Affairs, New Delhi.

6. The Secretary, A.P.Advocates' Association Library , High Court

Buildings, Hyderabad.

7 Two C.D. Copies.